

JMYT-239US

PATENT

#97 Reg for
Refund

11-14-03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. No: 09/857,759
Applicant: Susan Joy Cooper et al.
Filed: September 10, 2001
Title: ELECTRODE STRUCTURE
TC/A.U.: 1745
Examiner: Tracey Mae Dove

REQUEST FOR REFUND

Mail Stop 16
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I. REFUND REQUEST

This is a request for refund, with respect to the charge to Deposit Account No. 18-0350, shown on the statement dated October 2003, for the above-identified application. A copy of the monthly Deposit Account Statement, in which the error referred to occurs, accompanies this Request.

II. FEES CHARGED FOR WHICH REFUND REQUESTED

Extension of Time (one month) \$110.00

TOTAL REFUND REQUESTED \$110.00

III. EXPLANATION OF WHY CONTESTED CHARGE IS IN ERROR

The three-month deadline to respond to the Office Action dated June 18, 2003, in the above-identified application was Thursday, September 18, 2003. However, due to the official closing of the Federal Government, including the U.S. Patent and Trademark Office (PTO), on Thursday, September 18, and Friday, September 19, 2003, the response (copy enclosed) was filed on the next business day after September 19, namely, September 22, 2003. Accordingly, as the response was timely filed with the U.S. PTO (as indicated on the enclosed Pre-OG Notice), no extension of time fee is due in this application.

JMYT-239US

PATENT

IV. MANNER OF REFUND

Please make refund by crediting Deposit Account No. **18-0350**.

Respectfully submitted,



Christopher R. Lewis
Attorney for Applicant

CRL/lrb

Enclosures: Copy of Deposit Account Statement
Copy of the Amendment dated September 22, 2003
Copy of Pre-OG Notice

Dated: October 28, 2003

P.O. Box 980
Valley Forge, PA 19482-0980
(610) 407-0700

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October 28, 2003

Date


Christopher R. Lewis



UNITED STATES
PATENT AND
TRADEMARK OFFICE

Deposit Account Statement

Requested Statement Month:

October 2003

Deposit Account Number:

180350

Name:

RATNER AND PRESTIA

Attention:

Address:

P O BOX 980
VALLEY FORGE

City:

State:

PA
19482

Zip:

DATE	SEQ	POSTING REF TXT	ATTORNEY DOCKET NBR	FEE CODE	AMT	BAL
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10/15 27 PAYMENT	9203	-\$5,000.00	\$16,254.07
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10/16 208 PCT/US03/31485 KPG-5058WO	1704	\$689.00	\$14,905.07

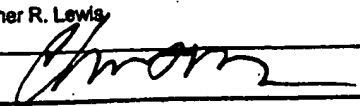
START	SUM OF	SUM OF	END
BALANCE	CHARGES	REPLENISH	BALANCE
\$17,161.07	\$7,256.00	\$5,000.00	\$14,905.07

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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/857,759
	Filing Date	September 10, 2001
	First Named Inventor	Susan J. Cooper
	Art Unit	1745
	Examiner Name	Tracy M. Dove
Total Number of Pages in This Submission 11	Attorney Docket No.	JMYT-239US

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/Declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation, Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks:		

SIGNATURE OF APPLICANT, ATTORNEY OR AGENT			
Firm or Individual	Christopher R. Lewis RatnerPrestia	Registration No. (Attorney/Agent)	36,201
Signature			
Date	September 22, 2003		

CERTIFICATE OF TRANSMISSION / MAILING			
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Name (Print/Type)	Christopher R. Lewis		
Signature		Date	September 22, 2003

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, ALEXANDRIA, VA 22313-1450.

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Appln. No.: 09/857,759
Amendment Dated September 22, 2003
Reply to Office Action of June 18, 2003

JMYT-239US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 09/857,759
Applicant(s): Susan J. Cooper et al.
Filed: September 10, 2001
Title: ELECTRODE STRUCTURE
TC/A.U.: 1745
Examiner: Tracy M. Dove
Confirmation No.: 9843
Docket No.: JMYT-239US

COPY

AMENDMENT

Mail Stop Non-Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Responsive to the Office Action dated June 18, 2003, please amend the above-identified application as follows and reconsider the application in view of the amendments are remarks provided below:

- ☐ Amendments to the Specification begin on page _____ of this paper.
- ☒ Amendments to the Claims are reflected in the listing of claims which begins on page 2 of this paper.
- ☐ Amendments to the Drawings begin on page _____ of this paper and include an attached replacement sheet(s).
- ☐ Amendments to the Abstract are on page _____ of this paper. A clean version of the Abstract is on page _____ of this paper.
- ☒ Remarks/Arguments begin on page 5 of this paper.

COPY

Amendments to the Claims: This listing of claims will replace all prior versions, and listings, of claims in the application.

Listing of Claims:

- 1 1. (Currently Amended) An electrode structure comprising a first
2 catalytic component and a second catalytic component, wherein:
- 3 (a) said first catalytic component comprises one or more electrocatalyst(s)
4 of formula $Pt-Y$, wherein Y is Mo, W or an oxide of Mo or W; and
- 5 (b) said second catalytic component comprises one or more
6 electrocatalyst(s) of formula $Pt-M$, where M is a metal alloyed with the
7 platinum and is one or more metals selected from the group consisting
8 of Ru, Rh, Ti, Cr, Mn, Fe, Co, Ni, Cu, Ga, Zr, Hf and Sn; and
- 9 wherein the first and second catalytic components are in ionic contact with each
10 other.
- 1 2. (Currently Amended) An electrode structure according to claim 12
2 wherein X is selected from the group consisting of Ru, Mn, Co, Ni, and Rh.
- 1 3. (Previously Presented) An electrode structure according to claim
2 1, wherein M is selected from Ru or Rh.
- 1 4. (Currently Amended) An electrode structure according to claim 1,
2 wherein the first catalytic component is selected from the group consisting of:
3 Pt/Mo, Pt/Mo/Co, Pt/W/Co, Pt/Ru/WO₃ and Pt/Ti/W; and the second catalytic
4 component is Pt/Ru.
- 1 5. (Previously Presented) An electrode comprising an electrode structure
2 according to claim 1 wherein the electrocatalyst materials are present on one side of
3 a gas diffusion material.

C O P Y

1 6. (Previously Presented) A catalysed membrane comprising an electrode
2 structure according to claim 1 wherein the electrocatalyst materials are present on
3 one side of a polymer electrolyte membrane material.

1 7. (Previously Presented) An MEA comprising an electrode structure
2 according to claim 1.

1 8. (Previously Presented) An electrode according to claim 5, wherein the
2 two catalyst materials are formulated into two separate layers.

1 9. (Previously Presented) An electrode according to claim 5, wherein the
2 two catalyst materials are formulated into one mixed layer.

1 10 (Currently Amended) A fuel cell comprising an electrode structure,
2 comprising a first catalytic component and a second catalytic component,
3 characterised in that the first catalytic component comprises one or more
4 electrocatalyst(s) of formula Pt-Y where Y is Mo, W, or an oxide of Mo or W, and the
5 second catalytic component comprises one or more electrocatalyst(s) of formula Pt-
6 M, where M is a metal alloyed with the platinum and is one or more metals selected
7 from the group consisting of Ru, Rh, Ti, Cr, Mn, Fe, Co, Ni, Cu, Ga, Zr, Hf and Sn,
8 and wherein the first and second catalytic components are in ionic contact with each
9 other.

11. (Canceled)

1 12. (Currently Amended) An electrode structure according to claim 1
2 wherein said first catalytic component comprises a third metal component X which is
3 alloyed with the platinum and which is one or more metals selected from the group
4 consisting of Ru, Rh, Ti, Cr, Mn, Fe, Co, Ni, Cu, Ga, Zr, Hf and Sn.

1 13. (Previously Presented) A catalysed membrane according to claim 6
2 wherein the two catalyst materials are formulated into two separate layers.

1 14. (Previously Presented) A catalysed membrane according to claim 6
2 wherein the two catalyst materials are formulated into one mixed layer.

1 15. (Previously Presented) An MEA according to claim 7 wherein the two
2 catalyst materials are formulated into two separate layers.

16. (Canceled)

1 17. (Previously Presented) An MEA according to claim 7 wherein the two
2 catalyst materials are formulated into one mixed layer.

1 18. (Previously Presented) A fuel cell according to claim 10 wherein said
2 first catalytic component comprises a third metal component X which is alloyed with
3 the platinum and which is one or more metals selected from the group consisting of
4 Ru, Rh, Ti, Cr, Mn, Fe, Co, Ni, Cu, Ga, Zr, Hf and Sn.

COPY

REMARKS

Claims 1-15, 17, and 18 were pending in this application. With this amendment, the applicants are amending claims 1, 2, 4, 10, 12, and 18. Claim 11 has been canceled. Upon entry of this amendment, claims 1-10, 12-15, 17, and 18 are the pending claims in this application.

In the Office Action dated June 18, 2003, claims 1-4, 10, 12, and 18 were objected to for reciting improper Markush group language. Claims 4 and 11 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite. Claim 11 was rejected under 35 U.S.C. § 101. Claims 1-7, 9-12, 14, 17, and 18 were rejected under 35 U.S.C. 102 (b) as being anticipated by Gunner et al., (EP 838 872 A2).

The applicants acknowledge with appreciation the Examiner's indication that claims 8, 13, 15 were be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The applicants believe, for the reasons discussed below, that claim 1 is allowable and, therefore, dependent claims 8, 13, and 15 are allowable without being rewritten in independent form.

Claim Objections

Claims 1-4, 10, 12, and 18 stand objected for reciting improper Markush group language. In response to this objection, the claims have been amended in the manner suggested by the Examiner so that each claim recites proper Markush group language. The applicants respectfully request withdrawal of the objection.

Rejection Under 35 U.S.C. § 112, Second Paragraph

Claims 4 and 11 stand rejected under 35 U.S.C. § 112, second paragraph, as indefinite for failure to particularly point out and distinctly claim the subject matter which the applicants regards as the invention. Specifically, the

Examiner contends that claim 4 recites "Wherein the first catalytic component is selected from: Pt/Mo, Pt/MO/Co, Pt/W/Co, Pt/Ru/WO₃ and Pt/Ti/W. However, Co, Ru and Ti are not possible metals for 'Y' in claim 1 (from which Claim 4 depends)." See page 2 of the Office Action. With respect to claim 11, the Examiner states that the claim "provides for the use of an electrode structure, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process" the applicants are intending to encompass." *Id.* at 2-3. Claim 11 has been canceled rendering the rejection moot with respect to this claim. For the reasons set forth below, the applicants respectfully submit that claim 4 is not indefinite.

At the outset, the applicants note that the Examiner has correctly stated that Co, Ru, and Ti are not possible metals for "Y" as claimed in claim 1. See page 2 of the Office Action. The applicants respectfully disagree because each of the first catalytic components listed in claim 4 (Pt/Mo, Pt/Mo/Co, Pt/W/Co, Pt/Ru/WO₃ and Pt/Ti/W) does contain a feature which is identifiable as Y. Specifically, Pt/Mo (Y is Mo), Pt/Mo/Co (Y is Mo), Pt/W/Co (Y is W), Pt/Ru/WO₃ (Y is WO₃) and Pt/Ti/W (Y is W). Claim 1 allows for the first catalyst component to contain metals in addition to Pt and Y. The claimed invention is directed to an electrode structure *comprising* a first catalytic component and a second catalytic component. The applicants note that Co, Ru, and Ti are such additional metals.

For the reasons set forth above, the applicants submit that claim 4 does in fact distinctly claim the subject matter which the applicant regards as the invention. Accordingly, the applicants respectfully request withdrawal of this rejection.

Rejection Under 35 U.S.C. § 101

Claim 11 stands rejected under 35 U.S.C. 101. Specifically, the Examiner states that the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process. Claim 11 has been canceled rendering the rejection moot.

Rejection Under 35 U.S.C. § 102 (b)

Claims 1-7, 9-12, 14, 17, and 18 stand rejected under 35 U.S.C. § 102 (b). Specifically, the Examiner contends that Gunner '872 anticipates the invention. The Examiner states that Gunner '872 discloses an electrode comprising a catalyst comprising a Pt-M alloy. The examiner contends that the second catalytic component of at least claim 1 is disclosed by Gunner '872 as a Pt-M alloy wherein M is selected from Ru, Rh, Ti, Cr, Mn, Fe, Co, Ni, Cu, Zn, Zr, Hf, and Sn, preferably Ru, Mn, Co, Ni, Rh and that the catalyst further comprises component Y wherein Y is preferably Mo, or W, or an oxide thereof. See page 3 of the Office Action. The Examiner also states that Gunner teaches that the Pt-M component and the Y component may be unalloyed, but in physical contact. See page 4 of the Office Action. The Examiner also states that "when the Y component contacts the Pt-M component, the Y component contacts Pt and thus Gunner teaches the first catalytic component Pt-Y." Claim 11 had been canceled rendering the rejection moot with respect to this claim. For the reasons set forth below, the applicants respectfully submit that claims 1-7, 9, 10, 12, 14, 16, and 18 are not anticipated by Gunner '872.

The applicants respectfully disagree that Gunner '872 discloses all of the features of the present invention as claimed in independent claims 1 and 10. Specifically, the claimed invention contains two separate catalytic components, namely, a first catalytic component and a second catalytic component. Also, the applicants note that the term "electrode structure" as used in the claims does not refer to a specific physical embodiment. The term "electrode structure" as defined in the specification, refers to compositional aspects of those parts of the electrochemical cell where the electrochemical reactions take place. Thus, the claimed invention calls for an electrode structure having a first and second catalytic composition at which electrochemical reactions take place. See specification at page 10, lines 18-20. Further, the present invention as claimed in claims 1 and 10 requires that "the first and second catalytic components are in ionic contact with each other." Gunner '872 fails to teach a first and second catalytic component, let alone, catalytic components in ionic contact with each other.

The applicants offer the following in order to explain the basis for distinction between the claimed invention and the cited reference. A single catalytic component may contain two electrocatalyst metals (or metal oxides), three electrocatalyst metals or metal oxides, or possibly even more electrocatalyst metals which may be either alloyed, or unalloyed but in physical contact. Thus, in a single catalytic component, such as that described in Gunner '872, all the metals and metal oxides are in intimate contact with each other either by alloying or physical mixing and are therefore, able to function as a single catalytic component. By contrast, separate catalytic components, as called for by the claimed invention, are not in intimate contact with each other. If the metals and metal oxides in separate catalytic components were to be in intimate contact with each other, they would fail to function as separate catalytic components.

The claimed invention requires two separate catalytic components that are in ionic contact and not in intimate contact with either other. Clearly, the claimed invention is distinguishable from Gunner '872 which discloses a single catalytic component comprising Pt-M-Y, wherein PT-M is an alloy of one or more of the metals selected from the transition metal elements or from Groups IIIA or IVA of the Periodic Table in "Handbook of Chemistry and Physics" 64th Ed., CRC Press, and "Y is a bronze forming element or an oxide thereof, characterized in that the Pt-M alloy is in intimate contact with Y and provided that M is not Ru if Y is WO₃. See Gunner '872 abstract. See also page 3, lines 30-35, 51-52. As described in the application, although CO tolerance is observed in electrocatalysts aimed at improving CO tolerance, such as in Gunner '872, the presence of CO₂ in the reformat fuel causes larger performance losses than that observed when alloys of platinum and ruthenium are used. The applicants note that the claimed invention results in a significant improvement in CO and CO₂ tolerance by providing a Pt/Ru-type electrocatalyst in ionic contact with a further electrocatalyst. See page 7, line 8 through page 8, line 3 of the specification. Thus, the claimed invention is directed to two separate catalytic components in ionic contact with each other and not a single catalytic component. Additionally, the claimed invention is not directed to separate catalytic components in intimate or physical contact with each other. If the two catalytic components of the claimed invention were to be in intimate contact, as opposed to ionic contact, they would not function as separate catalytic components.

Further, if they were in "intimate contact" they could not be properly characterized as "first and second catalytic components" of an "electrode structure" as claimed. Even when the first and second catalytic components of the present invention are formulated into one mixed layer, they are merely in physical contact and not intimate contact.

The applicants respectfully submit that the Examiner is mistaken with respect to the assertion that Gunner '872 discloses teaches a first and second catalytic component that are separate. The applicants submit that Gunner '872 neither discloses or suggests two separate catalytic components. The invention disclosed in Gunner '872 is directed to a single catalytic component wherein Pt and M are alloyed and Y is in intimate contact with the Pt-M alloy. See for example page 3, lines 30-36. There is no contemplation, whatsoever in Gunner '872 of two separate catalytic components. That Gunner '872 is directed to a single catalytic component is supported by the fact that the specification states that Y is in intimate contact with the Pt-M alloy. See for example page 3, lines 34 and 51-52. Because Pt-Y and Pt-M are in intimate contact, they comprise a single catalytic component and, therefore, cannot be two distinct catalytic components nor function as two distinct catalytic components as in the present invention. Moreover, Gunner '872 defines the term "intimate contact" and states: "by the term 'intimate contact' we mean that component Y may either be alloyed with the Pt-M alloy...or may be unalloyed but is in physical contact with the alloy. See page 3, lines 51-52. Accordingly, the applicants submit that Gunner '872 discloses a single catalytic component and that it is improper to describe the Pt-M and Pt-Y as distinct catalytic components because they are in intimate contact.

For the reasons set forth above, the applicants submit that independent claims 1 and 10 and dependent claims 2-7, 9, 12, 14, 16, and 18 are not anticipated by Gunner '872. Accordingly, the applicants respectfully request withdrawal of this rejection.

Appln. No.: 09/857,759
Amendment Dated September 22, 2003
Reply to Office Action of June 18, 2003

JMYT-239US

CONCLUSION

For the aforementioned reasons, the applicants submit that the pending claims are in condition for allowance. All grounds for objection or rejection have been overcome by the present amendment. Additionally, the newly added claim has full support in the specification and no new matter has been added. For all of these reasons, the applicants respectfully submit that the rejections under 35 U.S.C. §§ 101 and 102 should be withdrawn and favorable action is earnestly solicited.

Respectfully submitted,



Christopher R. Lewis, Reg. No. 36,201
Attorney for Applicants

PAM/kak

Dated: September 22, 2003

P.O. Box 980
Valley Forge, PA 19482-0980
(610) 407-0700

The Assistant Commissioner for Patents is hereby authorized to charge payment to Deposit Account No. 18-0350 of any fees associated with this communication.

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September 22, 2003



Christopher R. Lewis

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Closing of the United States Patent and Trademark Office on Thursday, September 18, 2003, and Friday, September 19, 2003

Office of Patent Legal Administration << Pre-OG Notices << Closing of the United States Patent and Trademark Office on Thursday, September 18, 2003, and Friday, September 19, 2003

In view of the official closing of the Federal Government offices in the Washington, D.C. metropolitan area, including the United States Patent and Trademark Office (USPTO), on Thursday, September 18, 2003, and Friday, September 19, 2003, the United States Patent and Trademark Office will consider Thursday, September 18, 2003, and Friday, September 19, 2003, a "Federal holiday within the District of Columbia" under 35 U.S.C. § 21 and 37 C.F.R. §§ 1.6, 1.7, 1.9, 2.2(d), 2.195, and 2.196. Any action or fee due on Thursday, September 18, 2003, or Friday, September 19, 2003, will be considered as timely for the purposes of, e.g., 35 U.S.C. §§ 119, 120, 133 and 151, if the action is taken, or the fee is paid, on the next succeeding business day on which the USPTO was open, that is, Monday, September 22, 2003.

37 C.F.R. §§ 1.6(a)(2) and 2.195(a)(4) provide that correspondence deposited as Express Mail in accordance with 37 C.F.R. § 1.10 or 2.198 will be considered as filed on the date of deposit with the United States Postal Service (USPS). Thus, any paper or fee properly deposited in accordance with 37 C.F.R. § 1.10 or 2.198 with the Express Mail service of the USPS on Thursday, September 18, 2003, or Friday, September 19, 2003 (that is, as shown by a "date-in" of Thursday, September 18, 2003, or Friday, September 19, 2003, on the Express Mail mailing label) will be considered filed in the USPTO on its date of deposit in the Express Mail service of the USPS. 37 C.F.R. § 2.195(a)(2) provides that trademark-related correspondence transmitted electronically to the USPTO will be considered filed in the USPTO on the date the USPTO receives the electronic transmission. Thus, trademark-related correspondence transmitted electronically on Thursday, September 18, 2003, and/or Friday, September 19, 2003, will be considered filed in the USPTO on the date the USPTO received the electronic transmission. Correspondence successfully received by the USPTO through the patent Electronic Filing System will receive the date as indicated on the Acknowledgment Receipt.

Inquiries concerning this notice may be directed to Fred Silverberg by e-mail at fred.silverberg@uspto.gov or telephone at 703-305-8986.

Date: 09/23/2003

Signed: Nicholas Godici for

JAMES E. ROGAN

Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

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	Filing Date	September 10, 2001
	First Named Inventor	Susan Joy Cooper
	Art Unit	1749
	Examiner Name	Tracey Mae Dove
Total Number of Pages in This Submission 17		Attorney Docket No. JMYT-239US

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SIGNATURE OF APPLICANT, ATTORNEY OR AGENT			
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Signature			
Date	October 28, 2003		

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